

## 2005 DRAFTING REQUEST

### Bill

Received: 11/10/2005

Received By: gmalaise

Wanted: Soon

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: John Wagnitz

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Employ Priv - prevailing wage

Extra Copies:

Submit via email: YES

Requester's email: Sen.Hansen@legis.state.wi.us

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Inspection of payroll records of contractors subject to the prevailing wage law; permitting DWD to charge only for the cost of frivolous requests

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### Instructions:

See Attached--require DWD to charge for the cost of inspecting the payroll records of contractors subject to the prevailing wage law only if DWD finds the request for inspection was frivolous

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 11/10/2005	jdyer 11/17/2005					State
/1			rschluet 11/17/2005		lemery 11/17/2005	lemery 01/31/2006	

FE Sent For:

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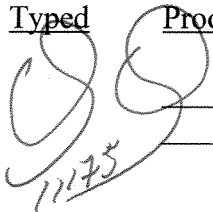
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/?	gmalaise	11/17/05					

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Shovers, Marc  
**Sent:** Thursday, November 10, 2005 1:21 PM  
**To:** Malaise, Gordon  
**Subject:** FW: Prevailing wage

**Attachments:** Proposed Legislative Changes to.doc

Hi Gordon:

Although this request is in ch. 66, it deals w/ the department of workforce development and how the department is supposed to handle complaints. Is it yours?

Marc

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**From:** Wagnitz, John  
**Sent:** Thursday, November 10, 2005 1:02 PM  
**To:** Shovers, Marc  
**Cc:** LRB.Legal  
**Subject:** FW: Prevailing wage

Marc,  
I'm not sure if this is your issue area but Senator Hansen would like to draft a bill relating to changing the provisions in §66.0903(10)© that require the department of workforce Development to charge complainants for invalid complaint investigations.

Please contact me if you have any questions.

Sincerely,

John Wagnitz  
Office of State Senator Dave Hansen  
319 South, State Capitol  
phone: (608) 266-5670



Proposed  
Legislative Changes t.

# InterOffice Memo

Department of Workforce Development

Date: November 9, 2005

File Ref: proposed legislative changes to

To: JoAnna Richard

From: Bob Anderson

Subject: **Proposed Legislative Changes to §66.0903(10)(c)**

The current statutory provision requiring the department to charge complainants for invalid complaint investigations is contained in §66.0903(10)©.

The principal problem with the current language is that complainants must be charged for an invalid complaint investigation regardless of whether there was sufficient cause to file a complaint and whether any reasonable person might presume a violation probably occurred. Unless you can actually document a bona-fide violation you pay for the cost of the investigation.

Here is my proposal to amend the current language to create a situation where complainants would only be charged for frivolous complaints:

§66.0903(10)©

If requested by any person, the department shall inspect the payroll records of any contractor, subcontractor or agent performing work on a project that is subject to this section to ensure compliance with this section. If the contractor, subcontractor or agent subject to the inspection is found to be in compliance, if the department determines the complaint to be frivolous and if the person making the request is a person performing the work specified in sub. (4), the department shall charge the person making the request the actual cost of the investigation. If the contractor, subcontractor or agent subject to this section is found to be in compliance, if the department determines the complaint to be frivolous and if the person making the request is not a person performing the work specified in sub. (4), the department shall charge the person making the request \$250 or the actual cost of the inspection, whichever is greater.

The underlined language in the above paragraph constitute the additions to the statute being proposed.

cc: Nunez, Lucia

103.49(5)(c)



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-4061/7

GMM:.....

Soon

jld

- Gen
- 1 AN ACT ...; relating to: inspection of the payroll records of contractors,  
2 subcontractors, and agents performing work on projects that are subject to the  
3 prevailing wage law.

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*Analysis by the Legislative Reference Bureau*

Under current law, certain laborers, workers, mechanics, and truck drivers employed on a state or local project of public works must be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project is located (prevailing wage law). Current law requires the Department of Workforce Development (DWD), if requested by any person, to inspect the payroll records of any contractor, subcontractor, or agent performing work on a project that is subject to the prevailing wage law to ensure compliance with that law. If the contractor, subcontractor, or agent is found to be in compliance with that law and if the person making the request is a person performing work that is subject to that law, DWD must charge the person the actual cost of the inspection. If the contractor, subcontractor, or agent is found to be in compliance with that law and if the person making the request is not a person performing work that is subject to that law, DWD must charge the person \$250 or the actual cost of the inspection, whichever is greater.

This bill requires DWD to charge a person making a request for the inspection of the payroll records of a contractor, subcontractor, or agent performing work on a project that is subject to the prevailing wage law only if DWD finds that the contractor, subcontractor, or agent is in compliance with that law and that the request is frivolous. In order to find that a request is frivolous, DWD must find that the person making the request made the request in bad faith, solely for the purpose of harassing or maliciously injuring the contractor, subcontractor, or agent, or that

✓  
FE-S  
the person making the request knew, or should have known, that there was no reasonable basis for believing that a violation of the prevailing wage law had been committed.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1        **SECTION 1.** <sup>✓</sup>66.0903 (10) (c) of the statutes is amended to read:

2        66.0903 (10) (c) If requested by any person, the department shall inspect the  
3        payroll records of any contractor, subcontractor, or agent performing work on a  
4        project that is subject to this section to ensure compliance with this section. If In the  
5        case of a request made by a person performing the work specified in sub. (4), if the  
6        department finds that the contractor, subcontractor, or agent subject to the  
7        inspection is found to be in compliance and if the person making the request is a  
8        person performing the work specified in sub. (4) that the request is frivolous, the  
9        department shall charge the person making the request the actual cost of the  
10       inspection. If In the case of a request made by a person not performing the work  
11       specified in sub. (4), if the department finds that the contractor, subcontractor, or  
12       agent subject to the inspection is found to be in compliance and if the person making  
13       the request is not a person performing the work specified in sub. (4) that the request  
14       is frivolous, the department shall charge the person making the request \$250 or the  
15       actual cost of the inspection, whichever is greater. In order to find that a request is  
16       frivolous, the department must find that the person making the request made the  
17       request in bad faith, solely for the purpose of harassing or maliciously injuring the  
18       contractor, subcontractor, or agent subject to the inspection, or that the person  
19       making the request knew, or should have known, that there was no reasonable basis  
20       for believing that a violation of this section had been committed. ✓

1           **SECTION 2.** 103.49 (5) (c) of the statutes is amended to read:

2           103.49 (5) (c) If requested by any person, the department shall inspect the  
3           payroll records of any contractor, subcontractor, or agent performing work on a  
4           project that is subject to this section to ensure compliance with this section. If In the  
5           case of a request made by a person performing the work specified in sub. (2m), if the  
6           department finds that the contractor, subcontractor, or agent subject to the  
7           inspection is found to be in compliance and if ~~the person making the request is a~~  
8           ~~person performing the work specified in sub. (2m)~~ that the request is frivolous, the  
9           department shall charge the person making the request the actual cost of the  
10          inspection. If In the case of a request made by a person not performing the work  
11          specified in sub. (2m), if the department finds that the contractor, subcontractor, or  
12          agent subject to the inspection is found to be in compliance and if ~~the person making~~  
13          ~~the request is not a person performing the work specified in sub. (2m)~~ that the  
14          request is frivolous, the department shall charge the person making the request \$250  
15          or the actual cost of the inspection, whichever is greater. In order to find that a  
16          request is frivolous, the department must find that the person making the request  
17          made the request in bad faith, solely for the purpose of harassing or maliciously  
18          injuring the contractor, subcontractor, or agent subject to the inspection, or that the  
19          person making the request knew, or should have known, that there was no  
20          reasonable basis for believing that a violation of this section had been committed.

History: 1983 a. 27; 1985 a. 159; 1985 a. 332 ss. 141, 142, 253; 1987 a. 403 s. 256; 1989 a. 228; 1993 a. 112; 1995 a. 27, 215, 225; 1997 a. 35; 1999 a. 70; 1999 a. 150 ss. 628, 672; 1999 a. 167; 2001 a. 16, 30.

21           **SECTION 3. Initial applicability.**

22           (1) INSPECTION OF PAYROLL RECORDS. This act first applies to requests for the  
23           inspection of payroll records made on the effective date of this subsection.

24           (END)



**Basford, Sarah**

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**From:** Wagnitz, John  
**Sent:** Tuesday, January 31, 2006 2:20 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-4061/1 Topic: Inspection of payroll records of contractors subject to the prevailing wage law; permitting DWD to charge only for the cost of frivolous requests

It has been requested by <Wagnitz, John> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-4061/1 Topic: Inspection of payroll records of contractors subject to the prevailing wage law; permitting DWD to charge only for the cost of frivolous requests